

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 059036-0040
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or Printed Name _____	Application Number 10/762,375	Filed January 23, 2004
	First Named Inventor Sergey N. RAZUMOV	
	Art Unit 3625	Examiner A. A. Shah

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number
36,324
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34



Signature

Alexander V. Yampolsky

Typed or printed name

202.756.8636

Telephone number

July 30, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*

<input type="checkbox"/>	*Total of _____ forms are submitted.
--------------------------	--------------------------------------

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Customer Number: 20277
Sergey N. RAZUMOV : Confirmation Number: 4460
Application No.: 10/762,375 : Group Art Unit: 3625
Filed: January 23, 2004 : Examiner: A. A. Shah
:

For: MULTIMEDIA TERMINAL FOR PRODUCT ORDERING

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Claims 29-43 have been rejected under 35 U.S.C. 102 as being anticipated by Sturr (2004/0143512). As demonstrated below, the Examiner's rejection contains a clear error.

In particular, independent claim 29 recites *inter alia* the display mechanism configured for displaying a first screen representing a first phase of the product ordering session and a second screen representing a second phase of the product ordering session, and the voice recognition mechanism configured to establish a first set of voice commands recognizable when the first screen is displayed, and a second set of voice commands recognizable when the second screen is displayed.

The Examiner considers the commands "back to burger combination," "no cheese," "burger," etc. in FIG. 4 of Sturr, and "back to combination," "orange," "iced tea," etc. in FIG. 5 to correspond to the claimed first and second sets of voice commands.

However, the screens shown in FIGS. 4 and 5 of Sturr indicate “Please touch your Choice.” Accordingly, the commands in FIGS. 4 and 5 are graphic objects on a touch screen rather than voice commands, as the claim requires. Moreover, Sturr discloses that “in operation, a customer enters an order via a touch screen...” (the first sentence of paragraph 0027). In the description of FIGS. 4 and 5, the reference discloses that the user selects choices.

Hence, the reference does not expressly disclose the claimed sets of voice commands.

It appears that the Examiner’s conclusion of anticipation is based on the following statement in the reference: “other means for entering information may also be used including keyboards, touch panels, pen input devices, joysticks, mice, microphones and voice recognition and response systems and other suitable means of making a selection that can be recognized by a computer.” (paragraph 0025).

It is respectfully submitted that this statement does not provide an express teaching that the graphic objects in FIGS. 4 and 5 are voice commands. Accordingly, the Examiner relies upon inherency without expressly indicating such reliance.

To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probability or possibilities. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

It is respectfully submitted that one skilled in the art would realize that the above statement in the reference does not indicate that the graphic objects in FIGS. 4 and 5 are **necessarily** voice commands. Assuming that microphones and voice recognition and response systems of making a selection are used in the Sturr system, they would not **necessarily** require

establishing one set of voice commands recognizable when the screen in FIG. 4 is displayed and another set of voice commands recognizable when the screen in FIG. 5 is displayed. For example, voice commands may be used without displaying the screens representing different phases of the ordering procedure, as the claims require.

The Examiner emphasizes the word “also” in the above statement in the reference. It appears that she believes that this word indicates that the other selection means are used in addition to the touch screen. This position is respectfully traversed. The expression “other means for entering information may also be used...” may indicate that the other means may be used instead of the disclosed touch screen.

Accordingly, the reference neither expressly nor inherently discloses the subject matter of claim 29. Hence, the Examiner’s conclusion of anticipation is unwarranted.

Independent claim 36 recites *inter alia* the voice recognition mechanism configured to establish a first set of voice commands recognizable during a first phase of the product ordering session, and a second set of voice commands recognizable during a second phase of the product ordering session, and the display mechanism configured for **displaying a first set of images representing the first set of voice commands during the first phase** of the product ordering session, and for **displaying a second set of images representing the second set of voice commands during the second phase** of the product ordering session.

Independent claim 40 recites similar steps.

The Examiner did not address the subject matter of claims 36 and 40. However, she addressed similar limitations in claim 32 dependent from claim 29 using the same arguments as the arguments discussed above in connection with claim 29.

It is respectfully submitted that the reference does not expressly disclose that the graphical objects in FIGS. 4 and 5 represent the respective sets of voice commands. Moreover, as discussed above, one skilled in the art would realize that the graphical objects in FIGS. 4 and 5 are not **necessarily** accompanied by the respective sets of voice commands.

Accordingly, Sturr neither expressly nor inherently discloses the subject matter of independent claims 36 and 40.

In addition, it is respectfully submitted that the Examiner's rejection of dependent claims contains errors.

For example, dependent claim 31 recites that the voice recognition mechanism is configured to recognize only voice commands of the first set when the first screen is displayed, and to recognize only voice commands of the second set when the second screen is displayed.

The Examiner misrepresents the reference by asserting that Sturr discloses these features. No factual support for the Examiner's assertion is provided.

Moreover, the Examiner has failed to point out specifically wherein Sturr discloses the features of the dependent claims 30-35. Instead she relies upon FIGS. 1-13, the paragraphs containing the entire description of the Sturr system, and her own incorrect interpretation of the reference based on the statement in paragraph 0025 discussed above.

In addition, the Examiner did not address the dependent claims 37-39 and 41-43.

Anticipation, under 35 U.S.C. § 102, requires that each element of a claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference.

Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1920 (Fed. Cir. 1989) cert. denied, 110 S.Ct. 154 (1989).

As shown above, Sturr neither expressly nor inherently discloses the subject matter of claims 29-43. The Examiner's rejection of these claims under 35 U.S.C. 102 is based on a clear factual deficiency. Therefore, reconsideration of the rejection under the Pre-Appeal Brief Conference Program is respectfully requested.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY:apr
Facsimile: 202.756.8087
Date: July 30, 2007

**Please recognize our Customer No. 20277
as our correspondence address.**